

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

UNITED STATES OF AMERICA

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CRIMINAL NO: 07-354

v.

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SECTION: "R"

TIMOTHY HARRIS, SR.

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FACTUAL BASIS

Should this matter proceed to trial, the United States would prove beyond a reasonable doubt, through credible testimony and reliable evidence, the following facts:

In August, 2004, **TIMOTHY HARRIS, SR. ("HARRIS")** owned and operated Elliot's Small Arms, a federal firearm's business located at 3008 Jefferson Highway, Jefferson Parish, Louisiana. **HARRIS**, who held a Federal Firearm's License ("FFL"), also owned the property in which Elliot's Small Arms operated. On or about August 19, 2004, due to repeated record-keeping violations, the Bureau of Alcohol, Tobacco, Firearms, and Explosives ("ATF") notified **HARRIS** that his FFL was revoked. Elliot's Small Arms continued to operate as **HARRIS** appealed the revocation of his FFL, which was ultimately denied.

In or near early February, 2005, **HARRIS** approached Hermann Eicke, III ("Eicke") and asked Eicke to acquire a FFL so the gun store could continue to operate. At the time, Eicke was an

employee of Elliot's Small Arms. However, **HARRIS** made it explicitly clear to Eicke that if Eicke obtained an FFL, **HARRIS** would continue to own, and exercise authority and control over the business. In exchange, **HARRIS** agreed to pay Eicke \$1,000 per week. Eicke accepted **HARRIS'S** offer and on February 25, 2005, Eicke executed an application to obtain a FFL. In the application, Eicke represented that he would be the sole owner and solely responsible for the business named Elliot's Gun Shop, located at 3008 Jefferson Highway, Jefferson Parish, Louisiana. In addition, Eicke represented that he intended to lease the premises from which Elliot's Gun Shop would operate from **HARRIS**. Despite knowing that these representations were false, Eicke made such representations at the direction of **HARRIS**, to legitimize the federal firearms application.

An agreement to "Buy and Sell," accompanied the application, that memorialized the pending sale and transfer of Elliot's Small Arms' firearms inventory by **HARRIS**, to Eicke. The terms of the contract memorialized that Eicke would purchase Elliot's Small Arms' inventory from **HARRIS** for \$165,000 in the form of a promissory note. A commercial lease also accompanied the application where Eicke agreed to lease the premises owned by **HARRIS** located at 3008 Jefferson Highway, Jefferson Parish, Louisiana, from May 1, 2005 through April 30, 2010, for a monthly rental payment of \$900.

Neither Eicke nor **HARRIS** ever contemplated that any of the terms of the contract or the commercial lease would be satisfied. Eicke, at the direction of **HARRIS**, simply attached the contract and the commercial lease to the application in an effort to further substantiate its legitimacy.

On March 4, 2005, ATF received Eicke's application to acquire a FFL along with the aforementioned attachments. On April 26, 2005, ATF approved the application and authorized Hermann Eicke, III to become a FFL holder. On May 1, 2005, Elliot's Gun Shop opened under the ostensible authority of Eicke and continued to operate until May 16, 2007. From May 1, 2005 through May 16, 2007, Elliot's Gun Shop sold approximately 13,200 firearms.

Shortly after Eicke accepted **HARRIS'S** proposal to acquire an FFL, **HARRIS** told an employee of Elliot's Small Arms ("Employee #1"), that although Eicke would acquire the FFL, he [**HARRIS**] would control and have authority over Elliot's Gun Shop. On a different occasion, **HARRIS** also told an informant, who assisted ATF in this investigation, who also was employed by Elliot's Small Arms, that Eicke agreed to acquire the FFL, but he [**HARRIS**] would maintain control and authority over the new firearms' business. On at least one of those occasions, Rebecca Zitzmann ("Zitzmann"), **HARRIS'S** girlfriend, who also worked in Elliot's Small Arms and in Elliot's Gun Shop, was present and failed to react to **HARRIS'S** statement, and appeared to adopt it as her own.

On May 16, 2007, **HARRIS** was arrested on a federal warrant at a fishing camp he owned, located at 1581 B Pecan Grove Road, Woodville, Mississippi. **HARRIS** subsequently executed a written waiver of his Miranda rights and agreed to be interviewed by federal agents. During the interview, **HARRIS** admitted that while he was "going through his revocation proceeding" with ATF, he approached Eicke and proposed to Eicke that Eicke apply for a FFL "for the store." **HARRIS** stated that he had arranged with Eicke that, although Eicke would hold the FFL, he

[**HARRIS**] would control the business. **HARRIS** acknowledged that he agreed to pay Eicke \$1000 a week if Eicke acquired the FFL.

Federal agents then showed **HARRIS** a copy of the “Buy and Sell” agreement that accompanied Eicke’s federal firearms application. **HARRIS** stated that the “Buy and Sell” agreement was fraudulent and it was only prepared “for the sake of appearances.” **HARRIS** stated that he [**HARRIS**] retained the same control of the business [Elliot’s Gun Shop] as he had [as the owner of Elliot’s Small Arms] prior to his FFL being revoked. **HARRIS** further stated that he was the primary person who ordered firearms from all wholesalers and conducted all of the transactions with Amchar Wholesale, Inc. (Amchar Wholesale, Inc. was Elliot’s Gun Shop’s exclusive Glock firearms distributor.) **HARRIS** stated that he exercised authority [at Elliot’s Gun Shop] to lower prices for customers when he was in the shop and that each employee in the store had the authority to lower the price [of a firearm] sold in Elliot’s Gun Shop by \$20, without receiving permission from him or Eicke. **HARRIS** stated that he was exclusively responsible for reporting income generated from Elliot’s Gun Shop to the store’s accountant, Brenda Harris, his ex-wife.

Due to the surge in business experienced as a result of Hurricane Katrina, **HARRIS** decided to increase the mark-up on firearms sold in Elliot’s Gun shop, depending on the type of firearm, from approximately 20% - 80%. Because the hurricane-related demand for firearms receding by September, 2006, **HARRIS** decided to reduce the mark-up on certain firearms sold in Elliot’s Gun Shop. On September 16, 2006, **HARRIS** engaged in a conversation regarding the demand for firearms after Hurricane Katrina which resulted in him being able to increase the mark-up on such firearms. **HARRIS** stated, “I had to come back to normal [regarding returning to pre-hurricane

firearm prices in Elliot's Gun Shop]. The high is over with." **HARRIS** further remarked, regarding the profit margin on firearms Elliot's Gun Shop sold at the first gun show it participated in after the hurricane, that he was making nearly \$150 per gun "this time last year." The aforementioned statements made by **HARRIS** were captured on a digital recording device worn by the aforementioned confidential informant.

Further, on September 16, 2006, Zitzmann engaged in a conversation with an officer for the New Orleans Police Department at a gun show at the Pontchartrain Center. The officer told Zitzmann that he had recently been in Elliot's Gun Shop looking at firearms and that he had been treated rudely by Eicke. Zitzmann told the officer that "Tim [**HARRIS**]" had spoken to Eicke about his inappropriate behavior with customers. Zitzmann told the officer that Eicke had been told "to stay off the [sales] floor" by "Tim [**HARRIS**]," and that Eicke does not behave in the manner described by the officer when "Tim [**HARRIS**] and I" are in the store. The informant, and Employee #1, stated that each of them heard Zitzmann making remarks in Elliot's Gun Shop about Eicke being required to stay off of the sales floor because of his poor attitude. Between May 1, 2005 and May 16, 2007, there were periods when Eicke was, in fact, banned from interacting with customers on the sales floor. Employee #1 and the informant confirmed that **HARRIS** maintained exclusive authority over purchasing firearms from wholesalers which were sold in Elliot's Gun Shop. **HARRIS** either ordered the firearms from wholesalers himself or delegated that responsibility to other store employees. However, store employees, were, in almost all instances, limited to ordering only those firearms in which **HARRIS** previously authorized the store to purchase and sell. **HARRIS** also delegated certain responsibilities to employees that involved ensuring that Elliot's

Gun Shop remained stocked with different types of inventory. **HARRIS** conferred authority to the informant to order tactical equipment. Further, **HARRIS** conferred authority to Employee #1 and another store employee ("Employee #2"), to order ammunition and holsters, respectfully.

In addition, from May 1, 2005 through May 16, 2007, **HARRIS** enjoyed the lion's share of the revenue generated from gun sales at Elliot's Gun Shop. On June 21, 2006, **HARRIS**, accompanied by Zitzmann, purchased a new 2006 Nautic Star boat from Aqua Marine Boat Store for \$32,275.49. On or about June 19, 2006, **HARRIS**, or Zitzmann, accompanied by **HARRIS**, submitted \$7,000 cash (or a \$7,000 cashier's check), as a down payment for the boat. On or about June 21, 2006, **HARRIS**, or Zitzmann, accompanied by **HARRIS**, satisfied the balance on the boat by tendering a check in the amount of \$25,275.42. The boat was titled in **HARRIS** and Zitzmann's names. Further, **HARRIS** and Zitzmann stated to the salesperson who consummated the boat transaction that they owned Elliot's Gun Shop.

On September 29, 2006, **HARRIS**, accompanied by Zitzmann, purchased a 2007 Chevrolet Avalanche from Bryan Chevrolet, Inc. for \$46,417.14. On or about September 27, 2006, Zitzmann, accompanied by **HARRIS**, submitted a payment to Bryan Chevrolet in the amount of \$500 cash. On September 29, 2006, Zitzmann, accompanied by **HARRIS**, submitted a check to Bryan Chevrolet in the amount of \$34,377.99. The check was the proceeds of a loan Zitzmann received from Metairie Bank on or about September 27, 2006, which was secured by the balance in her personal savings account. Payments on the loan were made beginning on October 5, 2006 until the loan was satisfied on December 7, 2006. On September 30, 2006, Zitzmann, accompanied by **HARRIS**, submitted a payment to Bryan Chevrolet in the amount of \$3,917.14 in cash. Finally, on October 2, 2006,

Zitzmann, accompanied by **HARRIS**, submitted a cashier's check in the amount of \$7,000 to Bryan Chevrolet to satisfy the remaining balance on the vehicle. On October 2, 2006, Zitzmann remitted \$7,000 in cash to Metairie Bank and Trust in exchange for the aforementioned cashier's check. Further, **HARRIS** and Zitzmann stated to the salesperson who consummated the vehicle transaction, that they owned Elliot's Gun Shop. (The dealership provided a \$1000 cash rebate which was applied to the price of the vehicle.)

On or about May 18, 2006, **HARRIS**, accompanied by Zitzmann, purchased a piece of real property located at 1581-B Pecan Grove Road, Woodville, Mississippi, for the price of \$95,000. **HARRIS** paid for the property by delivering \$95,000 in cash, in \$5,000 or \$10,000 bundles, or both, to the previous owner of the property. **HARRIS** told the previous owner of the property that he and Zitzmann "had a gun shop in Metairie."

On May 16, 2007, the United States seized cash in accounts which **HARRIS** controlled at Metairie Bank and Trust, which included: (1) a business checking account in the name of Elliot's Gun Shop that contained \$163,651.12; (2) a savings account in the name of Zitzmann that contained \$43,367.68; and, (3) a savings account in the name of **HARRIS** that contained \$14,277.96. In addition, on May 16, 2007, pursuant to a federal search warrant, law enforcement recovered \$23,783 inside a safe found in Elliot's Gun Shop.

In **HARRIS'S** May 16, 2007 statement to law enforcement, he said he had hidden \$35,000 - \$40,000 in an account at Metairie Bank and Trust in his girlfriend's name [Zitzmann]. **HARRIS** also stated that he had paid "\$39,000" for a Chevy Avalanche, "\$29,000" for a boat, and "\$115,000" for a fishing camp. **HARRIS** further stated that he had approximately \$20,000 in cash in his safe

inside Elliot's Gun Shop. **HARRIS** acknowledged that the cash recovered in the aforementioned accounts, in the safe, and the cash used to purchase the aforementioned property was generated from the sale of firearms from Elliot's Gun Shop. In addition, **HARRIS** acknowledged some of the cash recovered in the accounts, found in his safe, and used to purchase the assets was "skimmed" from the cash register at Elliot's Gun Shop. **HARRIS** also stated that his girlfriend, Zitzmann, "has an account in Metairie Bank." **HARRIS** explained that he paid "Becky" [Zitzmann], each week, \$30,000 in cash, which was generated from the sale of firearms at Elliot's Gun Shop.

In addition, from May 1, 2005 through on or about May 16, 2007, Eicke wrote himself a paycheck, drawn on the business account of Elliot's Gun Shop, for \$1,000 per week. (Eicke increased his paycheck to \$1100 a week, beginning in or near the fall of 2006). All other employees received paychecks based on their hourly rate of employment, except Zitzmann, Employee #3 (**HARRIS'S** son) and another store employee ("Employee #4," **HARRIS'S** brother). There were no canceled payroll checks drawn on the business account of Elliot's Gun Shop, between May 1, 2005 to May 16, 2007, for Zitzmann, Employee #3, or Employee #4.

Glock Incorporated ("Glock") offers to federal firearms dealers in the United States a program that allows law enforcement officers to purchase Glock pistols, through its wholesalers, at a reduced price. The reduced price corresponds to an approximate 20% discount to law enforcement officers compared to the retail price for the same pistols which are sold to members of the general public. The program required federal firearms dealers to sell the Glock pistols purchased for the law enforcement discount price at a corresponding discount in relation to their regular retail price. Elliot's Small Arms exclusive Glock wholesaler was AmChar Wholesale Incorporated ("Amchar"),

located at 100 Airpark Drive, Rochester, New York, 14624. Beginning in or near October, 2004, Glock authorized Elliot's Small Arms to participate in its law enforcement discount program.

In order to satisfy the requirements set forth by Glock Incorporated and Amchar to permit a federal firearms dealer to purchase a Glock pistol for the law enforcement discount price, Elliot's Small Arms was required to complete a form which specified that the purchase was for a law enforcement official. The form was on Amchar letterhead and required the officer's name, the officer's law enforcement agency, the date of the purchase, and the specifications of the weapon being purchased. The form required the officer's signature to certify that the weapon purchased was intended for that officer. To substantiate that the purchaser was a law enforcement officer, Amchar further required the officer's government credentials to be photocopied on the form. The form commonly became known as a "law letter."

The law enforcement discount program authorized by Glock Incorporated, as outlined above, continued when Elliot's Small Arms began operating as Elliot's Gun Shop beginning on May 1, 2005, and continuing through May 16, 2007. On October 30, 2006, **HARRIS** submitted, via facsimile, a law letter to Amchar that represented that Christopher Cantrell ("Cantrell"), a member of the Harahan Police Department, purchased a Glock pistol from Elliot's Gun Shop, at the law enforcement discount rate. However, the date in which the law letter was originally executed by Cantrell, December 17, 2005, had been altered by **HARRIS**. **HARRIS** altered the date on the law letter by marking through it with a white-out type substance, to the point where it was essentially illegible. In addition, Cantrell's department issued credentials which contained his photograph, and badge, were photocopied onto the law letter. As a result of submitting the altered law letter Elliot's

Gun Shop purchased a Glock pistol from Amchar at the law enforcement discount price. Subsequently the firearm was sold by Elliot's Gun Shop to a member of the general public for its full retail price.

On November 4, 2006, an informant retrieved fifteen (15) law letters that he had seen **HARRIS** send, via facsimile, on October 30, 2006. Included with the fifteen (15) law letters was a facsimile confirmation sheet showing that the law letters were successfully transmitted to number (585) 328-3747, which was AmChar's facsimile number. On November 4, 2006, the informant then removed the law letters and the facsimile confirmation sheet from the store and provided them to ATF Special Agent ("S/A") Brian L. MacCarthy. S/A MacCarthy quickly made copies of the documents and then returned them to the informant who placed them back in Elliot's Gun Shop. Among the fifteen (15) law letters which the informant provided to S/A McCarthy was the one which originally was executed by Cantrell on December 17, 2005.

On or about March 29, 2007, Cantrell was shown the aforementioned law letter that was faxed by **HARRIS** to Amchar on October 30, 2006. Cantrell confirmed the law letter contained his name, his photograph, a photocopy of his law enforcement issued credentials, and badge. Cantrell confirmed that he executed the law letter in Elliot's Gun Shop on December 17, 2005, when he purchased the Glock pistol. Cantrell further confirmed that the form contained his handwriting and that it was in substantially the same condition as it appeared when he executed it on December 17, 2005. However, Cantrell stated that the date on the form was not obscured when he executed it on December 17, 2005. Further, Cantrell stated that he did not authorize Elliot's Gun Shop to re-use, or alter the form. In addition, Cantrell stated he did not authorize Elliot's Gun Shop to maintain a

copy of his department issued credentials, or re-use his name or his credentials at any time. Finally, Cantrell stated that December 17, 2005, was the only time he executed a law letter or received a Glock firearm from Elliot's Gun Shop.

On May 16, 2007, S/A MacCarthy retrieved each law letter that AmChar maintained on file which it received from Elliot's Gun Shop and Elliot's Small Arms. Upon further investigation, it was determined that AmChar maintained on file the original law letter that Cantrell executed on December 17, 2005. The original law letter executed by Cantrell contained his name, a copy of his law enforcement credentials which contained his photograph, a copy of his badge, and his signature which was dated December 17, 2005. In addition, it was determined that on January 4, 2006, pursuant to receipt of such law letter, AmChar sold a Glock pistol to Elliot's Gun Shop at the law enforcement discount price.

Also on file at AmChar was the aforementioned law letter executed by Cantrell, with the date obscured which **HARRIS** faxed to AmChar on October 30, 2006. Upon further investigation it was determined, pursuant AmChar's receipt of Cantrell's altered law letter, on November 2, 2006, AmChar sold Elliot's Gun Shop a Glock pistol at the law enforcement discount price.

During **HARRIS'S** May 16, 2007, interview with federal agents he acknowledged that he had engaged in a scheme to defraud by purchasing Glock firearms at a discounted price from AmChar. **HARRIS** stated that he could purchase Glock pistols from Amchar for approximately a 20% discount if he provided AmChar a copy of the law enforcement/security credentials of the purchaser. **HARRIS** explained whenever a legitimate purchase of a Glock pistol was made by a law enforcement officer in Elliot's Gun Shop, he would copy the officer's credentials [on the law letter],

fax it [the law letter] to AmChar, and would receive a replacement Glock pistol for the one which was sold. **HARRIS** further explained that he would keep a copy of the officer's credentials on file [at Elliot's Gun Shop] and later, after selling another Glock pistol, would re-use the copy of the officer's credentials without the consent of the officer, to receive another pistol at the law enforcement discount rate. **HARRIS** stated that he would then sell the Glock pistols purchased at the law enforcement discount price for full retail price to members of the public. As of May 16, 2007, **HARRIS** estimated that "Over the last three years I provided false documents [law letters] to AmChar and obtained 2000 Glocks which I then sold in my store for full price."

In the course of the investigation it was determined that from October, 2004, through May 16, 2007, Elliot's Gun Shop purchased at least 950 Glock firearms from AmChar pursuant to **HARRIS** submitting, via facsimile, 950 altered law letters, without the authorization of the officers who originally executed them. Subsequently, Elliot's Gun Shop sold approximately 878 of the 950 Glock pistols to members of the public for full retail price. The remaining 72 Glocks were seized as part of Elliot's Gun Shop's firearms inventory on May 16, 2007. The government has no evidence that **HARRIS** sold any of the aforementioned Glock firearms to any person he knew was prohibited from possessing a firearm.

The wholesale price, without the law enforcement discount, that each of the 878 Glock firearms would have cost Elliot's Small Arms and Elliott's Gun Shop would have varied subtly depending on the make, and model of the pistol. However, it was determined that the price differential between the full wholesale price, and the law enforcement discount wholesale price for the 878 firearms, was, conservatively, \$43,900.

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